

# THE BERKMAN LAW OFFICE, LLC

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March 29, 2020

**BY ECF**

Hon. Eric R. Komitee  
United States District Judge  
United States District Court for the Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: *Nigen v. State of New York, et al.*  
Case no. 20-cv-1576 (EK)

Dear Judge Komitee,

Plaintiff's complaint (Dkt. 1) alleges that he is an adult resident of Brooklyn (¶ 3), a lawyer and concerned citizen (¶ 17), a person who travels in and out of New York City to meet the needs of his clients (¶ 18) and to other areas of the state and country to visit friends and family "and meet with likeminded people" (¶ 19), and "a devout Jew who regularly gathers with other members of his faith to practice their religious traditions as required by their faith" (¶ 22).

Plaintiff's complaint seeks to enjoin the government of the State of New York from enforcing the emergency measures implemented to protect the public from the clear and present danger of the Coronavirus pandemic now facing our city, state, country, and world. Plaintiff contends that his rights to visit friends, clients, and "likeminded people," to operate his law practice the same way as he does when there is no health crisis, and to gather with coreligionists, trumps the government's prerogative to implement emergency measures to protect the public, including plaintiff himself, his family and any elderly or infirm relatives he might have. He would have this Court substitute its judgment in place of Governor Cuomo and the executive branch of New York State's government, and shoulder the yoke of running the State's response to the pandemic.

Like Plaintiff, the undersigned is an adult resident of Brooklyn and a practicing lawyer, enjoys personal and professional travel, and practices Orthodox Judaism. In addition, the undersigned has three children and a sister-in-law who have thankfully recovered from COVID-19; a developmentally disabled child who would suffer tremendously if he were to develop that illness; two elderly parents who have been sequestered in their apartment for weeks for fear of contracting it; and a 91 year old father-in-law for whose safety the whole family is living in fear. My synagogue is closed. The rabbi, who is elderly

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and frail, is living in his basement to maintain maximum social distance. Every competent health expert has strongly urged everyone to do the same. Every significant rabbi has closed his synagogue and issued religious edicts barring people from gathering in groups for prayer. I agree with them all. I paid my employees this week and told them to stay home. I have been spending my time reading on my porch, tending to whatever business I can conduct by telephone or video conference (including a video oral argument in the Ninth Circuit), and not crying over the spilled milk of the things I can't get done right now because I know it is better to be alive and safe with no funerals to watch by video link than out and about getting sick and making other people sick. In short, I, and everyone I know, welcome the government actions about which Plaintiff complains, and am outraged by the suit Plaintiff has forced this Court to deal with.

In short, though I share many identities with Plaintiff, I believe that this action is ill-advised and ill-conceived, unfounded, morally repugnant, wrong as a matter of law, an inexcusable waste of the Court's resources which are limited at this time, and an embarrassment to each identity Plaintiff claims. I believe this action should be dismissed, and Plaintiff and Plaintiff's counsel should be sanctioned.

The undersigned respectfully requests that the Court permit him to appear herein as *amicus curiae* to provide the Court with perspective regarding Plaintiff's claims.

Respectfully yours,

/s/ Robert J. Tolchin

Robert J. Tolchin

cc: All counsel by ECF